

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BETHANY SUE SNYDER,

Plaintiff,

Case No: 1:09-cv-774

v

HON. JANET T. NEFF

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

OPINION AND ORDER

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that this Court reverse the Commissioner's decision to deny Plaintiff's claim for Supplemental Security Income (SSI) under Title XVI of the Social Security Act, and remand this case for further factual findings. The matter is presently before the Court on defendant's Objections (Dkt 11) to the R & R. Plaintiff has filed a Response (Dkt 12). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the R & R to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Defendant argues that the Magistrate Judge erred in concluding that the medical evidence, including treating podiatrist Seiler's opinion, supported greater restrictions than those stated by the Administrative Law Judge (ALJ). Defendant takes issue with the lack of specificity in the Magistrate Judge's conclusion, and argues that the conclusion does not take into account the ALJ's detailed discussion of the medical evidence (Tr. 23-27). Defendant further argues that the

Magistrate Judge's general rejection of the RFC appears inconsistent with the more cogent and nuanced aspects of her report, in which she accepted the ALJ's analyses and interpretation of the record evidence.

The Court is not persuaded by defendant's arguments. The Magistrate Judge's basis for reversal was narrowly focused on the ALJ's RFC determination, and is not inconsistent with other aspects of the Report and Recommendation. While the Magistrate Judge agreed with the ALJ's conclusions that no particular testimony or circumstance mandated a finding that plaintiff is "disabled," the Magistrate Judge disagreed with the ALJ's ultimate conclusion that plaintiff was able to perform "light work," within the specified limitations.

The Magistrate Judge properly considered *the record as a whole* in concluding that substantial evidence did not support the ALJ's conclusion that there exists a significant number of jobs that plaintiff can perform despite her limitations. In determining the substantiality of the evidence, the Court must consider the evidence on the record as a whole and take into account whatever in the record fairly detracts from its weight. *Richardson v. Sec'y of Health and Human Services*, 735 F.2d 962, 963 (6th Cir. 1984) (R & R at 2). The Magistrate Judge explained the basis for her conclusion, including that the opinion of the treating physician, Dr. Seiler, supports a conclusion that plaintiff is impaired to an extent beyond that recognized by the ALJ (R & R at 23). This is consistent with the Magistrate Judge's earlier conclusion that while not entitled to controlling weight, Dr. Seiler's opinion was entitled to significant weight (*id.* at 21). The same analysis applies to the Magistrate Judge's consideration of plaintiff's subjective allegations, which the Magistrate Judge found did not establish her entitlement to benefits (*id.* at 23), but did reveal that she is impaired to an extent beyond that recognized by the ALJ (*id.* at 24).

The Court finds no error in the Magistrate Judge's recommendation that this matter be remanded for further factual findings, including but not limited to, a determination of plaintiff's RFC and whether such precludes the performance of work that exists in significant numbers (R & R at 24).

Accordingly:

IT IS HEREBY ORDERED that the Objections (Dkt 11) are DENIED, the Report and Recommendation of the Magistrate Judge (Dkt 10) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the decision of the Commissioner of Social Security is REVERSED, and this matter is REMANDED for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g).

A Judgment will be entered consistent with this Opinion and Order.

Dated: September 23, 2010

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge